
1998 Wis Eth Bd 15
MEALS, LODGING, TRAVEL AND ENTERTAINMENT

Apart from the limited exceptions contained in §19.56(3), *Wisconsin Statutes*, the Ethics Board advises that a judge either not partake of free food and drink not available to the general public or pay the higher of the fair value of such food and drink or the ticket cost of the event.

Facts

- ¶1. This opinion is based upon these understandings:
- a. You are a judge and, hence, a state public official.
 - b. You recently received Opinion 98-10 of the Judicial Conduct Advisory Committee, which addressed several issues under the Code of Judicial Conduct.

Question

- ¶2. The Ethics Board understands your questions to be:
1. Consistent with laws administered by the Ethics Board, may a judge or judge's staff attend a holiday party given by a law firm some of whose members appear before the judge?
 2. Consistent with laws administered by the Ethics Board, may a judge or members of the judge's staff accept gifts of candy or food from attorneys?
 3. Consistent with laws administered by the Ethics Board, may a judge and the judge's spouse or guest attend a bar association's dinner as guests of the association?

Discussion

- ¶3. Judges are state public officials subject to the Code of Ethics for Public Officials and Employees, Chapter 19, subch. III, *Wisconsin Statutes*.¹ The

¹ Section 19.42(13)(c), *Wisconsin Statutes*, provides:

provision of the Ethics Code most pertinent to the issues you have raised is §19.45(3m), *Wisconsin Statutes*. That section provides:

19.45(3m) No state public official may accept or retain any transportation, lodging, meals, food or beverage, or reimbursement therefor, except in accordance with s. 19.56(3).

¶4. Section 19.56(3) contains a limited number of exceptions to the general prohibition on a public official's accepting food, meals, or beverages from others. These exceptions are:

- (a) the official receives the items in connection with presenting a talk;
- (b) the official can show by clear and convincing evidence that the items are offered for reasons unrelated to the official's holding public office;
- (c) the official can show by clear and convincing evidence that the items are received on behalf of the state of Wisconsin and primarily for the state's benefit;
- (d) the items are made available from, and reported by, a political committee under Chapter 11, *Wisconsin Statutes*; or
- (e) the items are made available by the department of commerce or the department of tourism in connection with certain events sponsored by those agencies.²

19.42(13) "State public office" means:

- (c) All positions identified under s. 20.923(2), (4), (4g), (4m), (6)(f) to (h) and (8) to (10), except clerical positions.

Judges are identified in §20.923(2)(b), *Wisconsin Statutes*.

It is our understanding that members of judges' staff are either state unclassified employees or county employees. State unclassified employees are subject to Wis. Admin. Code Chapter ER-MRS 24, administered by the Department of Employment Relations. A county employee may be subject to a county ethics code or to §19.59, *Wisconsin Statutes*, if the employee is appointed to serve for a specified term. See §19.42(7w)(c), *Wisconsin Statutes*.

² Section 19.56(3), *Wisconsin Statutes*, provides:

19.56(3) Notwithstanding s. 19.45:

- (a) A state public official may receive and retain reimbursement or payment of actual and reasonable expenses and an elected official may retain reasonable compensation, for a published work or for the presentation of a talk or participation in a meeting related to a topic specified in sub. (1) if the payment or reimbursement is paid or arranged by the organizer of the event or the publisher of the work.
- (b) A state public official may receive and retain anything of value if the activity or occasion for which it is given is unrelated to the official's use of the state's time, facilities, services or supplies not generally available to all citizens of this state and the official can show by clear and convincing evidence that the payment or reimbursement was unrelated to and did not arise from the recipient's holding or having

¶5. It is unlikely that any of these exceptions will apply in the circumstances you have outlined and that were addressed in Opinion 98-10. However, two exceptions are worthy of note. An official may accept food, meals, or beverages if the official can show by clear and convincing evidence that the items are either [1] offered for reasons unrelated to the official's holding or having held public office, or [2] received on behalf of the state of Wisconsin and primarily for the state's benefit. An example of the latter might be a judge's demonstration that the judge was attending an event at the direction of the chief judge of a judicial unit and that the costs would otherwise have been borne by the judiciary.

¶6. We also note that the Ethics Code encourages judges to meet with the public to talk about judicial processes and issues³ and provides that a judge

held a public office and was paid for a purpose unrelated to the purposes specified in sub. (1).

(c) A state public official may receive and retain from the state or on behalf of the state transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of actual and reasonable costs that the official can show by clear and convincing evidence were incurred or received on behalf of the state of Wisconsin and primarily for the benefit of the state and not primarily for the private benefit of the official or any other person.

(d) A state public official may receive and retain from a political committee under ch. 11 transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of costs permitted and reported in accordance with ch. 11.

(e) A state public official who is an officer or employee of the department of commerce may solicit, receive and retain on behalf of the state anything of value for the purpose of any of the following:

1. The sponsorship by the department of commerce of a trip to a foreign country primarily to promote trade between that country and this state that the department of commerce can demonstrate through clear and convincing evidence is primarily for the benefit of this state.

2. Hosting individuals in order to promote business, economic development, tourism or conferences sponsored by multistate, national or international associations of governments or governmental officials.

(em) A state public official who is an officer or employee of the department of tourism may solicit, receive and retain on behalf of the state anything of value for the purpose of hosting individuals in order to promote tourism.

(f) A state public official may receive and retain from the department of commerce anything of value which the department of commerce is authorized to provide under par. (e) and may receive and retain from the department of tourism anything of value which the department of tourism is authorized to provide under par. (em).

³ Section 19.56(1), *Wisconsin Statutes*, provides:

19.56(1) Every state public official is encouraged to meet with clubs, conventions, special interest groups, political groups, school groups and other gatherings to discuss and to interpret legislative, administrative, executive, or judicial processes

may receive reimbursement from the event's organizer for the presentation of a talk on these topics.⁴

Advice

¶7. Apart from the limited circumstances noted, the Ethics Board advises that a judge either not partake of free food and drink not available to the general public or pay the higher of the fair value of such food and drink or the ticket cost of the event.

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and proposals and issues initiated by or affecting a department or the judicial branch.

⁴ Section 19.56(3)(a), *Wisconsin Statutes*, provides:

19.56(3)(a) A state public official may receive and retain reimbursement or payment of actual and reasonable expenses and an elected official may retain reasonable compensation, for a published work or for the presentation of a talk or participation in a meeting related to a topic specified in sub. (1) if the payment or reimbursement is paid or arranged by the organizer of the event or the publisher of the work.